Sectt. II-27—45,004—21-10-27.

Revenue (1928) Department.

Ordinary SERIES.

G.O. No. 629

DATED 2 3 28

[Despatch Abstract.]

Suits - South Kanara - Mangalore - District Munsiff's Court - O.S.No.395/24 - Right of way - Land leased to Mangalore Ladies' Club - Defence on appeal - Orders passed.

C.F. 31

REVENUE DEPARTMENT.

CURRENT No. 462A

Received 192 *Registered* 6-2 1928

A 3
R S
24
6/11/28

Subject.

Suits - (South Kanara) - Mangalore District Munsif's Court - O.S. 395/24 - Right of way over government land - Appeal - Opposing.

ENCLOSURES.
No.
Spare copies

Reference A. No 8244/27-2

Station Madras *Dated the* 3rd February 1928.

From B.G. Holdsworth Esquire., I.C.S.,
Secretary Land Revenue. and
~~The~~ Board of Revenue, ~~Revenue~~ Settlement, ~~&c.~~
~~Separate Revenue.~~

N. Macmichael Esquire., C.S.I., I.C.S.,
Commissioner of Land Revenue.

~~Board's~~
~~Reference~~

Read the following papers :-

P 7-5 6 Petition from Mr.J.A.Pinto, Vakil for the Secretary, of the Mangalore Ladies' Club, Mangalore, dated 12th December 1927.

ii

P 7 c 5 Board's Reference No.A. 8244-27-1 dated 15-12-1927.

iii

P 9 6 Letter from E.M. Gawne Esquire., I.C.S., Collector of South Kanara, Ref.on. A-5-9490/24, dated 6th January 27.

REFERENCE :-

Submitted to Government in continuation of

of Board's Reference B.6413/27-3, dated 11th January 1928.

2. The Board does not agree with the Collector and the local Government Pleader in considering that the appeal in question need not be opposed. Under condition 5 of the Tenancy -at-will granted to the Ladies' Club, the Club should not assign, underlet or part with the possession of the -- demised land or any part thereof without the consent in writing of the lessor or his authorised officers first -- obtained. The lessor is the Secretary of State for India in Council and it is only under the orders of Government that the Collector can act. In this case there was only at best an implied consent of the Collector for the transfer of the land required for a pathway by the plaintiff. This seems to be insufficient. Again after having once rejected the claim of the plaintiff to the right of way now in question and after having refused even as a matter of concession to set apart any portion of the land demised for a pathway for the use of the plaintiff, before granting the tenancy-at-will and in view of the order in B.P. No. 1955 Misc. dated 18-7-27 the Board considers it unfair to the Ladies Club to go back upon those orders now and allow the Ladies' Club to fight out their case. The Board therefore requests that orders for opposing the appeal on behalf of Government may be passed at an early date.

B.R. Hall
Secretary.

To the Secretary to Government, Revenue Department
with a printed copy of a judgment (to be returned with reply)

M.K.G/3-2

Petition from Mr. J.A. Pinto, Vakil for the Secretary, of the Mangalore Ladies' Club, Mangalore, dated 12th December 1927

1. That the Petitioners are an Association of Ladies' of Mangalore, for purposes of social welfare with their office at Lighthouse Hill, Mangalore.

2. The Government was pleased to grant on lease a site on the Lighthouse Hill, Mangalore for the erection of the Mangalore Ladies' Club Buildings. The Indenture in favour of the Secretary of State for India in Council was executed on 31-10-1922 and subsequent to that date a handsome hall of stone and masonry work, and outbuildings have been put up.

3. That Mr. Pius Saldanha a neighbour opposed the grant of the site to the Ladies' Club but the objections were over-ruled. Later on Mr. Saldanha claimed a right of way across the site leased to the Ladies' Club. The Claim of Mr. Saldanha was rejected by the local authorities and finally by the Revenue Board.

4. That on 8-9-1924 Mr. Saldanha filed original Suit No. 395 of 1924 on the file of the Court of the District Munsiff of Mangalore for a declaration of his right of way. At that time Mr. Souter was the Collector of South Kanara and he was approached by the plaintiff to effect a compromise.

5. The negotiations for a compromise were carried on for some months and in February 1925 the plaintiff ~~filed~~ filed a petition in the Court to record a compromise, that was alleged to have been entered into between himself and the Mangalore Ladies' Club. This petition was resisted by the Ladies' Club on the ground that no such compromise had been entered into. It was dismissed by the District Munisff on 30-6-1927.

P 12 – 24 6

6. That throughout the proceedings both in the suit and in the petition the Ladies' Club strenuously resisted the claim of the plaintiff. The Collector of South Kanara, however,

however, instructed the Government Pleader to state that he had no objection to a decree being entered in terms of the alleged compromise. This has been noted by the District Munsiff in paragraph 2 of his order. P 12 of 6

7. That one of the grounds upon which the Ladies' Club opposed the petition of the plaintiff was that the sanction of Government was not obtained for the compromise. The Ladies' Club is only a lessee of Government and there is an express clause in the lease deed executed by the Ladies' Club in favour of the Secretary of State for India in Council that the Ladies' Club shall not sub-lease or in any manner dispose of or part with any portion of the land without the previous sanction of Government obtained in writing for the purpose. Admittedly there was no such sanction given in writing either by the Collector or by the Revenue Board or by any other authority. The District Munisff, however, in paragraph 12 of his order -- states as follows :- P 17 of 6

"Another objection raised by the 1st defendant is that "it was beyond the competence of the Managing Committee "to grant a sub-lease, because the Secretary of State's "sanction was a condition precedent to the exercise of "such power and no such sanction was obtained. As all "the communications passed through the Collector and as "he was a party-Defendant and as he approved of the terms "on which the sub-lease was to be granted, it is to be pre-"sumed that his approval amounts to a sanction and that "this objection also therefore must fail".

8. That the Ladies' Club submits that really there was no Government sanction. If a decree were passed in terms of the alleged compromise, it would admittedly affect the rights of Government over its own land. The Board's Standing Orders make it absolutely clear that when a suit is filed to which Government is a party and its interest in immoveable property is affected the Collector is bound to report the matter to the Board of Revenue and obtain its orders. The then Collector of South Kanara did not report

report the filing of the suit by the plaintiff claiming a right of way over Government land much less report the compromise negotiations or the fact of the plaintiff's having filed a petition to enter a decree on terms of the alleged compromise. Government's sanction was therefore not really obtained in the manner provided for the purpose. The Ladies' Club submits that it would be a bad precedent if a court of law is allowed to presume the sanction of Government merely because the Collector is made a party to a suit and approves orally of a particular course of action by a party to the suit. The Ladies' Club further begs to point out that Mr. Souter who was examined as a witness for the plaintiff made it perfectly clear that in his opinion as well as in the opinion of his predecessors the plaintiff had absolutely no right of way and that he took up the question of granting some portionof the land to the plaintiff merely in a spirit of charity.

9. Any concession shown to the plaintiff would set up a dangerous precedent in respect of the considerable Government land neighbouring upon the Ladies' Club premises and other similar lands.

10. The Plaintiff has now filed an appeal in the District Court of South Kanara against the order of the District -- Munsiff dismissing the plaintiff's petition to record a decree in terms of the alleged compromise.

11. The Ladies' Club begs to invite the attention of the Board of Revenue to the several matters hereinbefore stated and submits that it is just and expedient that the Board of Revenue should be pleased to contest in the appeal the finding of the District Munsiff that Government has sanctioned either the compromise negotiations or had approved of the terms of the -- compromise and to state that in fact Government does not -- approve of the terms of the alleged compromise and to direct the Collector of South Kanara and the local Government Pleader to take the necessary steps.

7

Copy of Board's Reference No.A. 8244/27-1, dated 15--12--1927.

Read the following :-

Petition from the Secretary of the Mangalore Ladies Club, Mangalore, dated 12th December 1927.

P 3-5-28

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REFERENCE :-

Suits - (South Kanara) - Mangalore District Munsiff's Court - O.S. 395/24 - Right of way over Government land - Appeal - Opposing.

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Referred to the Collector of South Kanara for early remarks

2. Certified copy of the order of the District Munsiff's Court should be submitted.

Sd/ B.G. Holdsworth,

Secretary

To the Collector of South Kanara.

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3-2

Copy of letter from E.M. Gawne Esquire.,I.C.S., Collector of South Kanara, Ref.on.A-3-9490/24, dated 6th January 1927.

Suits - (South Kanara) - Mangalore District Court - C.M.A. 53/27 (R.I.A.249/25 in O.S.No. 395/24 on the file of the District Munisf's Court, Mangalore).

--

P7 of Board's Reference No.A.8244/27, dated 15th December 1927.

The facts of the case were fully reported to the Board in my letter Ref.on A-3-9490/24, dated 11th May 1927 and also in my subsequent letter Ref.on A-3-9490-24, dated 6th July 1927 submitted in reply to Board's Reference No.A-3067/27- dated 6th June 1927. The Board sanctioned the defence of the suit in its Proceedings Mis. 1955, dated 18th July 1927.

P 36-37 of

P 38-40 of

P 1 of (not marked file)

2. The Plaintiff whose adjustment petition was dismissed by the District Munsif in R.I.A.No.249/25 has appealed to the District Court against the District Munsif's order of dismissal. The Secretary of the Ladies' Club wants Government as 2nd Defendant to raise in the pending appeal, the want of consent of the Secretary of State to the alleged compromise and its consequent invalidity. The District Munsiff in para 12 of his order has held that such consent or sanction ought to be presumed. I think that the -- District Munisf is quite right in his finding on the point. The Collector, Mr. Souter as representing the Secretary of State in the suit approved the terms of the proposed sub lease with a view to an amicable settlement of the dispute in anticipation of sanction of the Board. After all a right of way if allowed will not materially affect Government interests. I do not therefore think that Government need oppose the appeal. The Government Pleader, Mangalore, who was consulted by me is also of the same opinion. Please see copy of his letter dated 21st December 1927.

P17 of

P11 of

3. A printed copy of the order of the District Munsif, appealed against is enclosed as directed.

P12-36 of

Letter from Rao Saheb B. Mahabala Hegde, B.A.,B.L.,

Government Pleader and Public Prosecutor, Mangalore.

To - the Collector of South Kanara, Mangalore.

Dated - Mangalore, 21st December 1927.

Reference :- Suits - Mangalore - District Munsif's Court - O.S. 395/24.

Your Ref:on A-3-9490-24, dated 29th November 27.

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I am of opinion that the appeal of the Ladies' Club need not be opposed. Mr. Souter filed on behalf of -- Government a written statement saying that Government has no objection to a decree being passed in terms of the adjustment petition. Considering the history of the case I think Government need not contest a decree of Court if it holds that the adjustment petition ought to be given effect to. A right of way, allowed will not materially affect Government interests. If at all it is the Ladies' Club that is affected. It is not likely that Government will get back the site in its original state. So, as I said above the safest course is not to oppose the appeal.

13

Tel message

From the Under Secy to Govt.

Rev Dept

To the Secy Bd. of R&S

Remit please

CRF 11/2

Ref. Suit - (South Kanara) - Mangalore Dt munsif's Court - O. S. 395/24 - Right of way :- Land leased to Mangalore Ladies Club-HPA

Pl-2 cf

Bd's Ref A 8244/27-2 dy 3.2.28.

Please let me know urgently when the appeal is posted for hearing and send copies of the collector's reports

Ref No A3 9490-24 dt 11.5.27

Quoted at P 9 cf

Ref No A3 9490-24 dt 6.7.27

CRF 9.2.28.

disposed of in B P Mis 1953 dt 18.7.27

EP 9/1/28

9.2.28

9.2.28

15

C.F. 31

...evenue DEPARTMENT.

REVENUE DEPARTMENT

Received ... 1928 CURRENT No. 537A

Registered 11 2 1928.

A 2
EP
11/2/28

Subject.

Suits --(South Kanara) - Bangalore District Munsif's Court - O.S. No.395/24 - Right of way - Land leased to Bangalore Ladies' Club - Telephone message of 9th February 1923.

P 32 of 6

ENCLOSURES.
No.
Spare copies

Reference.A-No8244/27.3,

Station Madras. Dated the 10th February 1928

From B.G.Holdsworth, Esquire, I.C.S.,

Secretary - Land Revenue and
~~The Board of Revenue, Revenue Settlement, and~~
Separate Revenue

To N.Macmichael Esquire, C.S.I., I.C.S.,
Commissioner of Land Revenue.

~~Resolution~~
~~Reference.~~

The date to which the appeal is posted is not known. The Collector will be requested to report it to Government direct.

2. Copies of the Collector's letters Nos. A.3-9490/24 dated the 11th May 1927 and A.3-9490/24, dated the 6th Jan. 1927 are herewith submitted.

P 36 to 6

3. The Collector of South Kanara is requested to report direct to the Secretary to Government, Revenue Department the date to which the appeal against the order of the District Munsif, Bangalore in O.S.No.395/24 regarding the Constitutent petition, is posted on submitting

16 &

to the Board.

N Koicpilli
10-2-28.
for Secretary.

o the Secretary to Government, Revenue Department, with copies of Collector's letters.

To the Collector of South Kanara - paragraph 3 only.

- - - -

C. .F./10-2-1928.
10-2

Letter from W.Gawne Esquire, I.C.S., Collector of South Kanara, Ref.No.on.A-3-9490/24, dated the 11th May 1927.

One Mr.Pius Saldhana filed the above suit against the Mangalore Ladies Club and the Secretary of State for India in Council.

2. The suit is for a declaration that the Plaintiff has been using the two foot paths marked A & B in the plan attached to the plaint from time immemorial as a Mamool right and for an injunction to remove the obstructions to these foot - paths.

3. The plot T.S.No.25 of Attavar village through which the pathways are alleged to run was granted along with two - other plots viz., 82/1 and 83/1.A to the Ladies Club on a - tenancy-at-will under sanction of Government conveyed in G.O. (V) No.Misc.,1417 Revenue dated the 23rd June 1921 communicated - with B.P.No.727 Misc., dated the 29th June 1921. The Ladies Club executed the lease deed on 31st October 1922 in the form (X) approved in G.O.No. Misc., 2390 Revenue, dated the 27th December 1921 communicated with B.P.No.17 Misc., dated the 5th (Q) January 1922 and subsequently modified in G.O.No.Misc., 1348 Revenue dated the 22nd July 1922 communicated with B.P.No.1352 Misc., dated the 25th July 1922.

A The point about the existence of the alleged right of way was raised by the Plaintiff before the Club was given the tenancy-at-will in his petitions to the Board - vide - - Board's Reference No.C-3595/21.1, dated the 3rd October 1921. The then Collector Mr.Ellis on inspection found the claim to the right of way quite preposterous and reported accordingly to the Board in his letter Ref.P.R.No.2051 Revenue 20, dated the 15th October 1921. The Board declined to interfere on the Plaintiff's behalf in B.P.No.1191 Misc., dated the 26th October 1921. The tenancy.at.will did not therefore provide for the reservation of any right of way.

4. On receipt of the plaint the then Collector, Mr. [illegible], wanted to settle the matter amicably [illegible]

upon the Plaintiff to compromise the suit on certain conditions but the Ladies Club did not agree to them. Subsequently the Managing Committee of the Club in its proceedings held on 6th January 1925 passed a resolution signifying its willingness to give to the Plaintiff on lease revocable by it without any cause shown, a pathway 10 feet wide across R.S.No.25. The Plaintiff having agreed to this, Mr.Souter handed over all the papers to the Government Pleader, Mangalore requesting him to see that the Plaintiff withdrew the suit on the strength of the compromise agreed upon and to intimate the fact so that the Board might be informed of the facts of the case and its final result.

Mr.Souter was so sure of the withdrawal of the suit that he did not write beforehand to the Board and obtain the necessary sanction for the defence of the suit and the approval of the written statement which the Government Pleader, Mangalore, got signed by him and filed in Court in March 1925. I enclose a copy of this written statement filed on behalf of Government in the suit.

5. I find however that no compromise was actually effected owing to factions in the Club itself, one side agreeing to the compromise and another side opposing it. The suit is still pending. Mr.Souter was examined on commission for 3 days on 7th October 1926, 22nd February 1927 and 28th February 1927. The Government Pleader, Vizagapatam, appeared on behalf of Government during this examination. The Government Pleader, Mangalore says that an application for recording adjustment has been filed and it stands posted to 14th June 1927 and that the trial of the suit should go on in case the adjustment is not recorded by the Court. I think that in the circumstances of the case no other action is called for, but as the case is being protracted I think the Board ought to be aware of it. The appearance of the Government Pleader have been only formal till now. I have been unable to ascertain why the suit has dragged on for the last two years.

19 5

6. The records noted in the margin are enclosed for reference.

1. Copy of plaint with plan.
2. Copy of written statement filed on behalf of - Government.
3. Copy of resolution dated 6th January 1925 of the Ladies Club.

- - - -

Letter from Gawne Esquire, I.C.S., Collector of South Canara, Ref.on.A-3-No.9490/24, dated the 6th July 1927.

&c Board's Reference No.A-3067/27.1, dated the 6th June '27.

In my letter of the 11th May I said that Mr. Souter did not obtain sanction for filing the written statement as he was certain the suit would be compromised immediately. I have no positive information.

2. Mr.Souter evidently desired to compromise the suit, in spite of Mr.Ellis' letter dated the 15th October 1921 rejecting the claim of Mr.Saldhana to a right of way over the land, in order that there might be an amicable settlement. I consider personally that Mr.Saldhana was probably irritated to find that the new Club building would spoil his view towards Lighthouse Hill. He could not sue for a view, but he could sue for a right of way. Lighthouse Hill is a general rendezvous in fine weather for people to enjoy a breeze and a pleasant walk and it is probable that, even though the Plaintiff cannot establish a right of way, his household used to go to the Lighthouse Hill that way and his children would have used that way as a short cut to St.Aloysius' College. So when Mr.Souter found Mr-Saldhana determined to get a right of way he probably thought that the Club might concede a path which losing much themselves. He evidently misjudged the composition of some of the lady members.

3. The Government Pleader was consulted. He was also

Saheb A.J.Lobo and he informed Mr.Souter at the time that he was related to the Plaintiff. On 20th November 1924 he prepared a written statement (copy enclosed) denying the Plaintiff's claim to a footpath and asserting that the Plaintiff had no cause of action against the Government. As Mr. Souter had almost completed negotiations then he did not proceed further with the draft written statement. The written statement that was actually filed in March 1925 was quite a different statement, and, as the copy sent with my letter of 11th May shows, merely stated that Government had no objection to a decree being passed in the terms of the adjustment petition. p31-37 ✓

4. As regards the validity of the resolution of the Ladies' Club dated 6th January 1925, I submit that the resolution in question was passed at the special meeting of the Managing Committee of the Club. There was also a subsequent resolution dated the 4th June 1925 (copy enclosed) which was also passed at the meeting of the Managing Committee revoking the tenancy-at-will which the former resolution created in favour of the Plaintiff. I consulted the Government Pleader Bangalore about this and he agrees with my view that nothing short of a resolution passed by a general meeting of the Club members would really be valid and that the Managing Committee could have no power to bind the Club in such a matter, which lay outside the general management of the Club for which the General Committee is constituted. There is no doubt that Mrs.Shrestha who may be said to run the Committee is averse to a general meeting. No general meeting of the Club has been held for 2 years and she excuses this by saying that the Club books are filed in the Court.

5. I enclose copies of (1) the written statement put in by the Club in the suit, (2) the application for adjustment filed by the Plaintiff with his affidavit, (3) the application of the Ladies' Club with the affidavit of the Secretary of the Club, and (4) Mr.Souter's evidence taken at Vizagapatam as di-

directed.

6. I understand that the Court passed an order that there would be no adjustment and that the suit is posted for further proceedings on 20th July.

-:-

C.N.N./10-2-1933.

10-2.

23

G.F.—29.

DEPARTMENT.

REVENUE

Received ..... 191 . *Registered* ..... 191 .

A 2
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Subject.

Suits - (South Kanara) - Mangalore - District Munsif's Court - O.S.No.395/24 - Right of way - Land leased to Mangalore Ladies' Club - C.M.A.No.53/27 on the file of the District Court.

Board's Refce.A.8244/27-3, dated 10th February 1928.

ENCLOSURES.

No. .....

Spare copies .....

No.
Ref. on A3-9490-24.

Station Mangalore , *Dated the* 20th February 191 28.

From (Name) E.M. Gawne, Esquire, I.C.S.,

(Designation) Collector of South Kanara.

To The Secretary to the Government of Madras,

Revenue Department,

Madras.

Sir,

The appeal, C.M.A.No.53/27, against the order of the District Munsif, Mangalore rejecting the adjustment petition of the plaintiff in the above suit stands posted to 24th February 1928; but the Government Pleader, Mangalore says that owing to sessions work the appeal is not likely to be heard that day. I shall report if the appeal is reposted to any particular date.

Your obedient servant,

For Collector.

Copy to the Board of Revenue, Land Revenue and Settlement, Madras.

25

Telegram

To

(The) Collector ~~of~~ South Kanara

Mangalore

~~Reference~~ - your letter [A 3] 9490 - [24] [dated] twentieth instant

~~Appeal~~ Appl - Mangalore Ladies' Club [Secty]

Appeal Apply [for] ~~one~~ month adjournment

if (the) ~~Appeal~~ caption (is) taken [up]

(on) (the) twenty fourth. [and]

report adjourned date

ERP
22.2.28

Ef
22/2/28

DPR
22.2.28

P.T. to Board of Revenue &

Collector of South Kana

Dpd by Van / Post / ~~Messenger~~

Dpr's. initials

Date 22-2-1928

27 46

C.F.—29.

REVENUE **DEPARTMENT.**

Rev 765A

Received ..... 1 . *Registered* 2-3 1928.

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2/3/28

Subject.

Suits - (South Kanara) - Mangalore - District Munsif's Court - O.S.No.395/24 - Right of way - Land leased to Mangalore Ladies' Club - C.M.A.No.53/27 on the file of the District Court.

Telegram, dated 22nd February 1928.

ENCLOSURES.
No.
Spare copies

No. Ref. on A3-9490-24.

Station Bajpe , *Dated the* 28th February 1928.

From (Name) E.M. Gawne, Esquire, I.C.S.,

(Designation) Collector of South Kanara.

To The Secretary to the Government of Madras,

Revenue Department,

M a d r a s.

Sir,

The appeal in question stands adjourned to 26th March 1928 for hearing.

Your obedient servant,

Kalbulcum Pa
29/2/28

For Collector.

2/2/28

Copy to the Board of Revenue, Land Revenue and Settlement, Madras.

M.S.R./29.2.28.

462A/28

Revenue Department

Appeal date of hearing not known. Collector asked to report
1
p 34 cf

Suits = Appeal - (South Kanara) - District Court - Right of way - Land leased to the Mangalore Ladies Club.

cf [Board's Reference A 8244/27 dt 3.2.28 + 10.2.28]

To V.S

In 1921, the Govt sanctioned the grant to the Mangalore Ladies Club of a tenancy at will in respect of 1.18 acres of land in R.S Nos 25, 82/1 & 83/1A of Attavar village. In 1922 the Club executed the lease deed in the form approved by the Govt in G.O 2890/21 and G.O 1348/22.

GO 1417 J (V) + 2362/1 para 3 at p 36 cf

P 36 cf

(X) + (Q)

2 Before the deed was executed, the plaintiff (Mr Salohana) claimed a right of way through the site. The Board then Collector (Mr Ellis) reported that the claim was preposterous. The Board thereupon declined to interfere on the plaintiff's behalf: & no reservation of pathway was made in the lease deed.×

'A' on page 36 cf + P 11 cf in linked file

Para 1 at p 11 cf in linked file

P 36 cf

× copy at p 10–16 of (X)

3. Mr Salohena then filed a suit in the Dt Munsif's Court. ~~The Collector (Mr Souter) wanted to have the Suit compromised and attempted~~ settled In the suit

P 8 cf in linked file

the Ladies Club was the first defendant and the Govt were impleaded as the second defendant. The then Collector (Mr Sankar) wanted to have the suit settled amicably and attempted to bring the ~~plaintiff~~ parties together + ~~obtain~~ their consent to a compromise [Please see para 6 of the judgment for the part taken by him to bring about a settlement]. One section of the members of the Ladies Club was agreeable to have a compromise + to allow the plaintiff a right of way over the land, but the other was not. The former passed a resolution at a meeting on 6.1.25 accepting the terms of the compromise, but the latter contended that the resolution was not validly passed. The plaintiff thereupon moved the court for a compromise decree in accordance with the terms alleged by him to have been agreed upon by the parties. The Ladies Club raised the objection saying that the alleged compromise was not completed and that there was only a long series of inconclusive negotiations. The Collector who was the 2nd defendant without taking the orders of the Board of Revenue put in a written statement to the effect that the Govt had no objection

p 12 cf

Paras 4 5 at p 36 3rd cf

P 13-16 cf

— 10 —

Para 1 at p 12 cf

Para 3 at p 12 cf

P 37-38 cf
Para 2 at p 12 cf
+ para 3 at p. 39 cf

to the decree being passed ~~in the~~ according to the terms of the ~~compromise~~ petition put in by the plaintiff The Munsif has decided that the resolution of the Ladies Pas 2 2.2 + 2.3 at p 24 of f club passed on 6.1.25 was not valid & has declined to grant a decree as in accordance with the petition prayed for by the plaintiff. The plaintiff has now appealed to the District Court against the Munsif's order on the ~~petition~~ compromise petition put in by him. The suit is still pending : and the Board (to Para 3 at p 40 of f whom the present Collector reported the facts about the suit ~~has~~ for the first time) has directed that the suit should be actively contested on behalf of the Govt, Para 2 at p 9 of f in sunked file as any decree in the suit would be binding on them

2. The question for consideration now is whether the Govt should oppose the appeal preferred by Mr Salotheru against the Munsif's orders on his petition The Ladies Club through its vakil has sent copy at p 3-5 of a petition requesting the Govt to oppose the appeal on the grounds

No 2 8 at 1, 4 of f (a) that if a decree were passed in terms of the alleged compromise, it would affect the rights of the Govt over their own land

(b) that the statement ~~petition~~ put in by the Collector in the lower court agreeing to a decree being granted according to the terms of the alleged compromise was put in on his own authority & had not the sanction or approval of the Govt. Para 11 at p 5 of

3 The local Govt Pleader & the Collector consider that a right of way if allowed will not materially affect Govt interests & are not in favour of ~~appl~~ contesting the appeal. The Collector adds that the Dt Munsif has held that the consent or sanction of the Govt to the compromise ought to be presumed from the Collector's statement put in court, & that the Munsif is right in his finding on the point. P 9 & 11 of P 9 of

The Board, however, considers that an P 2 of

appeal should be filed on the following grounds:-

(a) The lessor is the secretary of state & it is only under the orders of the Govt the Collector can act. ~~The consent of the Govt to allowing a pathway can in this case~~

(b) Even if the Collector's action is taken as valid ~~on the~~ in this case there was only an implied consent of the Collector to transfer ~~grant~~ the land required for a pathway, but no actual grant. This is insufficient.

(c) The claim for a pathway has, below

P 36 cf

F^ a.v. m Kei

P 10 - 16 of (X)

rejected by the Board + the defence of the suit has also been sanctio . . No pathway has also been reserved by the Govt in the lease-deed ..To go back upon these orders + to allow the Ladies Club ~~in the circumstances~~ to fight out its case would be unfair..

For orders whether in the circumstances the appeal should be opposed on behalf of the Govt-

EP 17/2/28 The view of the Board of Rev as set out on page 2 c/f may be accepted

MMV 17. 2. 28

S

It does not seem to matter to the Govt whether there is or is not a right of way over a piece of waste land of which it can retain possession at any rate What justification is there for spending public money on the defence of a suit to establish such a right of way If the Ladies Club want to fight the suit (as affects) ~~which they can pay the costs~~ would Govt fight it too surely they should pay the expenses of the Govt

CNo. 643A/28 [From the Colltr. S. Kamara Ref. A_3-9490-24 of 20-2-28.

To Under Secy

Please see para 3 of Bds Ref-ce on page 34 C.F. and the Colltr's letter on page 42 C.F. The suit stands posted for the 24th February. A draft telegram to the Colltr to apply for an adjournment is submtd for approval. After issue of the telegram, a further note & a draft order will be submitted with respect to Secy's note on page 5 ante.

CRP 22.2.28

EP 22/2/28

Issue MM

22.2.28

[Issued as Telegram of 22-2-28] p 44 CF

CNo. 765 A/28 [From the Colltr. S Kamara Ref A_3-9490-24 of 20-2-28] p 46 CF.

To Under Secy

Please see Secy's remarks on page 5 ante:- [Suit posted to 26.3.28]

~~A draft order is submitted for approval~~

~~CRP 22.2.28~~ ~~The appeal stands adjourned to 26th March 28.~~ p 46 CF

2 ~~The Govt are not interested in contesting~~ ~~the suit~~ The plaintiffs claims a right of way. Mr Ellis who was the Collector in 1921 reported that though the petitioner had no right to the reservation of land for a path was possible, & that he was not in favour of granting it ~~only~~ in view of the very strong ~~objection~~ opposition of the Ladies Club & Mrs Sinter who inspected the locality has recorded his opinion that 10 feet should be allowed for the path. The present Collector has also remarked that the Club is conducting

Pages 112 ante & 111 C & M x 1931 C

vide para from Asstt Secy at p 4 ante

P 4 C 6 in
I Cell file

the suit with ammus The grant of the land for a path being unobjectionable from the point of view of the Govt interests, there is no reason for spending public money for fighting the suit A draft order in accordance with the Secretary's remarks at P S N.F. is submitted for approval

EP
3/3/28

6. 3. 28

S

5.3.28

Draft for acceptance

5.3.28

Fin

EP

Rev. 462 A/28
10.3.28.
(with Cutch file 3333A/28)

EP

(Only the draft order need be read)

Finance (Accts.)

Submitted that the draft order may be accepted in this deptt

12.3.28

12.3.28

12.3.28

12.3.28

Rev

Fin No. 4067 Accts-I
12.3.28

TO U.S

Revenue Dept

Draft for approval
14.3.28.

EP
13/3/28

S

14.3.28

C I B
21-3-28
no borrow
Circ. 14.3.28

37.

Revenue DEPARTMENT.

Sec *I-5 (b)—8,004—26-10-27. (6)

	Date.	Initials.
When received for Fair-copying.		
When copied ..	21/3	
When examined ..		
When signed ..		
When despatched ..		

4.30 21/3

READ AGAIN G.O. No. ....., dated ..... 192 .

" " " " ..... " ..... 192 .

READ ALSO:—

C. No. 537 A/28 From the Board of Rev., L.R. & S No. A 8244/27 dated 10.2.1928.

" " By today's post " CRP 21.3.28 " ..... " ..... 192 .

" " " " ..... " ..... " ..... 192 .

ORDER.

No. 629, dated 21.3.1928.

Mis

(V)

In G.O.Mis.1417 Revenue, dated 23-6-21, the Government sanctioned the grant to the Mangalore Ladies' Club of a tenancy at will in respect of 1.18 acres of land in Attavar village, Mangalore town, South Kanara district. Before the lease deed was executed Mr. Pius Saldanha claimed a right of way through the site granted in S.No.25. The Collector (Mr Ellis) reported that ~~was~~ ~~proposes to grant~~ The Board declined

para 3 on p 3 c f. + 3 b of F

through the reservation of a right of way was possible he did not recommend the removal from the site of the thirty devils raised by the Ladies' Club.

38

to interfere on behalf of Mr.Saldanha. Mr. Saldanha then filed a suit in the Dt. Munsif's Court, Mangalore, for a declaration of his right of way. In the suit the Ladies Club was the first defendant and the Government were impleaded as the second defendant. Negotiations for a compromise were carried on for some time and the plaintiff filed a petition in the Court to record a compromise that was alleged to have been entered into between himself and the ~~other parties~~ Ladies Club with the approval of the Collector. This petition was opposed by the Ladies' Club on the ground that no such compromise had been entered into and was dismissed by the District Munsif. The plaintiff has now appealed to the Dt. Court against the Dt. Munsif 's order on the petition put in by him. The Board has recommended that the appeal should be opposed on behalf of the Government.

vide Index 1 on page

Index 5 on page 3 of F

Pr 2 of F

2. The Government observe that

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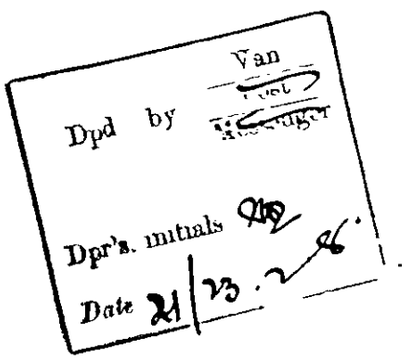
the grant of a right of way which has been claimed by the plaintiff will in no way affect any Government interest. On the other hand the Collector (Mr. Souter) who inspected the plot on 1-12-24 considered that some concession should be granted to Mr. Saldanha. The Government, therefore, do not see any justification for spending public money on the defence of the suit or in opposing the appeal. The Board is requested to inform the Collector that he should intruct the local Government Pleader to represent to the Court that the Government is prepared to abide by the Court's decision concerning the right of way and propose to remain exparte and to request the Court to exonerate the Government from the payment of costs.

214 C F



To the Board of Rev. L.R. & S.
with a printed copy of judgment
(sent)